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House Bill 4103 (As Passed House)

Topic: Credit Freeze
Sponsor: Representative Angerer
Co-sponsors: Representatives Ebli, Tobocman, Ball, Polidori, Accavitti, Miller, Donigan, and Kathleen Law
Committee: House Banking & Financial Services
Senate Banking & Financial Institutions

Date Introduced: January 23, 2007

Date of Summary: March 22, 2007

The bill is entitled the Credit Security Act of 2007. It permits certain consumers to place a security freeze on their credit report immediately. All consumers would be able to do so beginning March 1, 2009. A consumer reporting agency receiving a freeze request would be required to place the freeze on the consumer report within 5 business days of receipt. A fee may be charged but is limited by the bill to a maximum of \$20. No fee may be charged to consumers who are the victims of identity theft. Until March 1, 2009, requests must be in writing and be sent by certified mail or by overnight delivery. Beginning on that date, requests may be submitted by electronic mail, secure Internet website, telephone, facsimile, or other similar means of telephonic or electronic communication as selected by the consumer reporting agency. Once a security freeze has been placed, a report may not be released to a third party without prior express authorization from the consumer. A consumer reporting agency may advise a third party that a security freeze is in effect.

Within 10 days of receiving a request for a security freeze, a consumer reporting agency is required to provide the following to the consumer:

- Written confirmation that the security freeze is in place;
- A unique personal identification number or password;
- A written description of the process for placing, removing, and temporarily lifting the freeze and the process for allowing access to information in the report while the freeze is in effect

A consumer may request a replacement PIN or password in writing. The consumer reporting agency is required to provide the replacement number or password within 7 days. A fee may be charged for this service and is limited to a maximum of \$20 by the bill.

A consumer reporting agency is required to notify a person requesting a consumer report if a security freeze is in effect. Written confirmation of a consumer's name, address, date of birth, or social security number in a consumer report is required within 30 days after posting. Written confirmation is not required for technical modifications of information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

A security freeze is required to be removed or temporarily lifted if the consumer requests this action or the consumer report has been frozen due to a material misrepresentation of fact by the consumer. Temporary lifting of a freeze is provided in cases where the consumer provides the following:

- Clear and proper identification of the consumer;
- The consumer's PIN or password;
- The specific time period for allowing access to the report;
- The appropriate fee.

A consumer reporting agency receiving a request to temporarily lift a freeze before March 1, 2009 is required to do so within 3 business days. Requests must be in writing and sent by certified mail or by overnight delivery. Beginning March 1, 2009, requests may be submitted by other telephonic or electronic means selected by the consumer reporting agency and the freeze is required to be lifted within 15 minutes if received between 6 a.m. and 9:30 p.m. The bill provides for certain exclusions from the 15-minute requirement, including an unauthorized or illegal act by a third party (e.g. hacking) and an operational interruption. A security freeze remains in place until the consumer requests its removal. A freeze must be removed within 3 business days after receiving a request to do so. No fees may be charged for temporarily lifting or removing a security freeze.

The bill provides for consumer action against a person who fails to comply with the requirements of the bill. For negligent failure to comply, the consumer may recover actual damages plus reasonable attorney fees and court costs. Willful failure to comply may result in damages of not less than \$100 and not more than \$1,000 if that amount is greater than the actual damages. Punitive damages may also be awarded to the consumer. A consumer reporting agency may bring an action against a person that obtains a consumer report, requests a security freeze, or requests the temporarily lifting or removal of a freeze under false pretenses or in an attempt to violate federal or state law. Recovery is limited to actual damages sustained by the agency or \$1,000, whichever is greater. If a court finds that an unsuccessful pleading, motion, or other paper was filed in bad faith or for purposes of harassment, the court is required to award reasonable attorney fees to the prevailing party.

The bill contains the following exemptions to the use of a consumer report.

- When the report is used for the purpose of reviewing an account or collecting the financial obligation owing for an account, contract, or negotiable instrument predating the freeze.
- A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to which access has been granted for purposes of facilitating an extension of credit or other permissible use.
- A state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.
- A child support agency acting pursuant to Part D of Title IV of the Social Security Act.
- The state acting to investigate fraud, investigate or collect delinquent taxes or unpaid court orders, or fulfill other statutory responsibilities consistent with the permissible uses of consumer reports in federal law.
- Adjusting a rate or claim or underwriting for insurance purposes.
- Using credit information for prescreening as provided in the Fair Credit Reporting Act.
- Administering a consumer report monitoring subscription service to which the consumer has subscribed.
- Providing a consumer a copy of his or her report in response to the consumer's request.

Certain entities are not required to place a security freeze on a consumer report, including:

- A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. Such an agency is required to honor a security freeze placed on a report by another consumer reporting agency.
- A check services or fraud prevention services company.
- A deposit account information service company.
- A consumer reporting agency whose database or file consists only of information concerning and used for criminal record information, fraud prevention or detection, personal loss history information, or employment, tenant, or background screening.

The bill contains an enacting section stating that it takes effect 60 days after enactment.